IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JERRY J. IRONS	:	CIVIL ACTION
	:	
v.	:	
	:	
TRANSCOR AMERICA, INC., et al.	:	NO. 01-4328

MEMORANDUM AND ORDER

McLaughlin, J. March 9, 2006

TransCor America, Inc. ("TransCor") is a company that transports prisoners and detainees. The plaintiff has alleged that TransCor and four of its employees, Kenneth Blick, Rafael Cruz-Martinez, Michael DeMoss, and Bhawani Poochoon (the "transport agents"), violated his civil rights by failing to provide him adequate medical care while transporting him from Maryland to Ohio.[1]

The only claims remaining in the case are the plaintiff's 42 U.S.C. § 1983 claims against TransCor and the four transport agents. The defendants have filed a supplemental motion for summary judgment, on the ground that the defendants

[1] Mr. Irons died in 2002. This case is being litigated by his estate. The Court continues to refer to Mr. Irons as the plaintiff, and in the present tense, because the parties do so.

did not act under color of state law.[2] The Court will deny the motion.

I. Facts

The Court recites here only the facts that are relevant to the state action question, interpreting them in the light most favorable to the plaintiff.[3]

On May 3, 2000, the plaintiff was arrested in Maryland for an alleged outstanding warrant against him in Ohio. The following day, the plaintiff waived a formal extradition, and agreed to "accompany any agent by the authorities of Cleveland, Ohio, as a prisoner" from Maryland to Ohio. Def's Ex. G (Waiver of Extradition).

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[2] On July 26, 2005 the Court gave the defendants leave to file a supplemental motion for summary judgement on the issue of whether the defendants were acting under color of state law. In the final section of their brief in support of the motion, the defendants put forth another ground for summary judgment: that the plaintiff cannot establish a constitutional violation because temporary transport custodians are not obligated to provide medical care. Because this argument exceeds the scope of additional briefing permitted by the Court, the Court will deny the defendants' motion without prejudice to the defendants' ability to raise the argument during trial.

[3] On a motion for summary judgment, a court must view the evidence and draw reasonable inferences therefrom in the light most favorable to the party opposing summary judgment. See, e.g., Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). Summary judgment is proper if the pleadings and other evidence on the record "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

Defendants Mr. Blick and Mr. Cruz-Martinez accepted custody of the plaintiff on May 17, 2000. TransCor's normal operating procedure is to perform a pat-down search or strip search before putting a prisoner or detainee in the transport van. While in the van, the plaintiff and the other detainees were handcuffed with their hands in front of them. On one occasion, Mr. Cruz-Martinez handcuffed the plaintiff behind his back and handcuffed his feet to a grate on the back of the van. Def's Ex. G (Request to Release Prisoner; Prisoner Receipt; Waiver of Extradition); Defs' Ex. L (DeMoss Dep.) 47:18-48:12; Defs' Ex. M (Irons Dep.) 95:20-96:3.

The plaintiff spent the night of May 17 at a county jail in New Jersey. For the next two nights, the plaintiff slept in the van. On May 20, the plaintiff returned to the county jail in New Jersey to spend the night. Defs' Ex. M (Irons Dep.) 23:11-14, 25:13-21.

Defendants Mr. Poochoon and Mr. DeMoss picked the plaintiff up from a prison in Pennsylvania on May 21. That evening, the plaintiff stayed overnight in a jail in Connecticut. On May 22, Mr. Poochoon and Mr. DeMoss checked the plaintiff into a jail in New Bedford, Massachusetts at approximately 2:40 in the afternoon. When the plaintiff became ill that evening, the staff at the jail called Mr. Poochoon and asked him to take the plaintiff to a hospital. Mr. Poochoon and Mr. DeMoss took the

plaintiff to a hospital very late that evening or early the next morning. Mr. DeMoss guarded the plaintiff at the hospital overnight. The plaintiff was also handcuffed to the bed and wore shackles on his feet. Defs' Ex. I (Poochoon Dep.) 19:17-25:17; Ex. L (DeMoss Dep.) 30:20-31:2; Defs' Ex. J (Medical Report Form); Ex. M (Irons Dep.) 96:3-6.

On May 23, 2000, the Cuyahoga County Prosecutor's Office requested that TransCor release the plaintiff from custody. Mr. DeMoss and Mr. Poochoon released the plaintiff at the hospital, then drove him to a nearby Greyhound bus station, where they bought him a ticket and left him. Defs' Ex. B (Order Detail); Defs' Ex. J (Medical Report Form); Defs' Ex. I (Poochoon Dep.) 25:16-26:14; Ex. L (DeMoss Dep.) 32:11-33:4.

II. Analysis

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the Constitution, and must show that the alleged deprivation was committed by a person acting under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988). To determine whether the defendants acted under color of state law, the Court must ask, first, whether the plaintiff's deprivation was "caused by the exercise of some right or privilege created by the State," and second, whether the defendant "may fairly be said to be a state actor." Lugar v.

Edmondson Oil Co., 457 U.S. 922, 937 (1982). The defendants have challenged the plaintiff's ability to meet either part of the Lugar inquiry.

a. Deprivation Caused by Exercise of Right or Privilege Created by the State

The first part of the Lugar test is satisfied when the defendant would not have been able to engage in the alleged unconstitutional acts but for the authorization of the State. Edmonson v. Leesville Concrete Co., Inc., 500 U.S. 614, 621 (1991). See also Mark v. Borough of Hatboro, 51 F.3d 1137, 1144 (3d Cir. 1995) (in a § 1983 suit against a volunteer firefighting company, the first part of the Lugar test is satisfied where the alleged constitutional deprivation was directly related to an agreement between the Borough and the company to delegate the Borough's firefighting duties to the company).

Ohio law provides that an arrest warrant shall be directed to a specific officer or department. Ohio Rev. Code Ann. § 2935.18 (2005). Ohio prosecutors have implied authority to designate an agent to transport a person who has waived jurisdiction back to Ohio, however. 2002 Ohio Op. Atty Gen. No. 2, 2002 Ohio AG Lexis 2, at *11-13 and n.3.

The plaintiff has raised a genuine question of material fact as to whether the defendants would have been able to engage in the alleged unconstitutional acts but for the authorization of

the State of Ohio. The Waiver of Extradition refers to TransCor as an "agent by the authorities of Cleveland, Ohio." TransCor's "Order Detail" for the plaintiff's transport refers to the Cuyahoga County Prosecutor's Office as the "Customer." The Order Detail shows that the Prosecutor's Office placed the order on May 8, 2000, and requested that TransCor let the plaintiff go on May 23, 2000. The defendants have not put forth any evidence showing that they would have had authority to take the plaintiff into custody before receiving the May 8 order, or that they would have had discretion to keep the plaintiff in custody after receiving the May 23 request. See Defs' Ex. G (Waiver of Extradition); Defs' Ex. B (Order Detail).

b. Performance of an Exclusive Government Function

The second part of the Lugar inquiry is whether the defendant may fairly be said to be a state actor. State action can be found under any one or a combination of several approaches, including the "exclusive government function" approach, the "joint participation or symbiotic relationship" approach, and the "nexus" approach. Lugar 457 U.S. at 939; Groman v. Manalapan, 47 F.3d 628, 639 (3d Cir. 1995). Whatever approach a court uses, it "must remain focused on the heart of the state action inquiry, which . . . is to discern if the defendant exercised power possessed by virtue of state law and

made possible only because the wrongdoer is clothed with the authority of state law." Id. at 640, citing West v. Atkins, 487 U.S. 42, 49 (1988). Here, the plaintiff has at least raised genuine issues of material fact as to whether the defendants are state actors under the "exclusive government function" approach.

To determine whether state action exists under the exclusive government function approach, the Court must ask whether the function performed has been "traditionally the exclusive prerogative of the State." Rendell-Baker v. Kohn, 457 U.S. 830, 842 (1982) (emphasis in original, quotations omitted). Although the Supreme Court and the Courts of Appeals have not addressed whether prisoner transport is an exclusive state function, cases involving private correctional facilities are instructive.

The Supreme Court has assumed that prisoners in privately run prisons can bring § 1983 actions against the prison companies and their employees. See Correctional Services Corp. v. Malesko, 534 U.S. 61, 71 n. 5 (2001) ("state prisoners . . . already enjoy a right of action against private correctional providers under 42 U.S.C. § 1983") (emphasis in original).[4] At

[4] In Richardson v. McNight, 521 U.S. 399, 405. (1997), the Supreme Court did note that "correctional functions have never been exclusively public." The Supreme Court made this observation, however, in the context of holding that private prison guards are not entitled to qualified immunity from suits under § 1983 because "history does not reveal a 'firmly rooted' tradition of immunity applicable to privately employed prison

least two Courts of Appeals have held that incarcerating criminals is a function traditionally reserved to the state. See Rosborough v. Management & Training Corp., 350 F.3d 459, 461 (5th Cir. 2003) (private prison companies and their employees are state actors because "confinement of wrongdoers--though sometimes delegated to private entities--is a fundamentally governmental function"); Skelton v. Pri-Cor, Inc., 963 F.2d 100, 102 (6th Cir. 1991) (private corporation that operates a detention center is "no doubt performing a public function traditionally reserved to the state"); Street v. Corrections Corp. of Am., 102 F.3d 810, 814 (6th Cir. 1996) (same). Several district courts have reached the same conclusion. See McCullum v. City of Philadelphia, Civ. Act. No. 98-5858, 1999 U.S. Dist. LEXIS 10423, at *7-8 (E.D. Pa. July 13, 1999) (listing other decisions).

Case law regarding private prison companies is instructive for several reasons. First, private prison companies would not have custody over their prisoners but for the authorization of the State. The plaintiff has raised a genuine question of material fact as to whether the defendants would have had custody over him but for the authorization of the State of Ohio. Second, the plaintiff has presented sufficient facts to establish that the defendants exercised control over him comparable to incarceration. The defendants physically

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guards." Id. at 404.

restrained the plaintiff, decided when and what he ate, and when and where he slept. Third, the plaintiff has also presented sufficient facts to establish that the plaintiff's transport involved elements of incarceration, where the defendants checked the plaintiff into local correctional facilities on at least four occasions.

The plaintiff has, at the very least, raised genuine questions of material fact as to whether his alleged deprivation was caused by the exercise of some right or privilege created by the State of Ohio, and whether the defendants may fairly be said to be state actors. Therefore, the Court will deny the defendants' supplemental motion for summary judgment.

An appropriate Order follows.

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ORDER

AND NOW, this 9th day of March, 2006, upon consideration of the defendants' supplemental motion for summary judgment (Doc. No. 94), the plaintiff's opposition, and the defendants' reply thereto, for the reasons stated in a memorandum of today's date, it is HEREBY ORDERED that the defendants' motion is DENIED.

It is FURTHER ORDERED that the plaintiff will respond to the defendants' motions in limine (Doc. Nos. 87 to 93) on or before March 24, 2006.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.